BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

WILMA L. MCKINZIE)	
Claimant)	
VS.)	
) Docket No. 241,68	39
MIDWEST REGIONAL CREDIT UNION)	
Respondent)	
AND)	
)	
CUNA MUTUAL GROUP)	
Insurance Carrier)	

<u>ORDER</u>

Respondent and its insurance carrier appealed the April 19, 1999 preliminary hearing Order entered by Administrative Law Judge Julie A. N. Sample.

ISSUES

This is a claim for an October 30, 1998 accident resulting in alleged right leg and back injuries. After conducting a preliminary hearing where claimant testified and after reviewing the deposition testimony of several other witnesses, the Judge awarded claimant temporary total disability and medical benefits.

The respondent and its insurance carrier contend the Judge erred. They argue that claimant is lying about the accident and, therefore, did not injure her back at work.

The only issue before the Board on this appeal is whether claimant sustained personal injury by accident arising out of and in the course of her employment with the respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds:

The preliminary hearing Order should be affirmed.

The Judge found that Ms. McKinzie injured herself at work on Friday, October 30, 1998, when the chair that she was sitting in malfunctioned causing her right knee to strike the floor. Ms. McKinzie testified that immediately after the incident her leg and back hurt. She also testified that over the weekend those symptoms worsened to the point that she had problems getting up. On Monday, Ms. McKinzie saw her family physician and reported the injury to her employer, Midwest Regional Credit Union.

Because there were no witnesses to the accident, Ms. McKinzie's credibility is crucial. After observing Ms. McKinzie testify, the Judge found her description of the accident persuasive and awarded her benefits. At this stage of the proceeding, the Board gives some deference to the Judge's determination that Ms. McKinzie was a credible witness. Therefore, the Board adopts the Judge's finding that Ms. McKinzie sustained personal injury by accident arising out of and in the course of her employment with the credit union.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim or at a later preliminary hearing.¹

WHEREFORE, the Appeals Board affirms the April 19, 1999 preliminary hearing Order entered by Judge Julie A. N. Sample.

IT IS SO ORDERED.

Dated this day of June 1999.

BOARD MEMBER

c: Mark E. Kolich, Kansas City, KS James M. McVay, Great Bend, KS Julie A. N. Sample, Administrative Law Judge Philip S. Harness, Director

¹ K.S.A. 1998 Supp. 44-534a(a)(2).